

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN

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MARK ANTHONY ADELL,

Plaintiff,

v.

Case No. 19-C-438

JEFFREY MANLOVE and  
ROBERT WEINMAN,

Defendants.

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**ORDER**

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On October 20, 2020, I granted Plaintiff's motion for leave to proceed on appeal without prepaying the filing fee and ordered him to submit a \$1.71 initial partial filing fee for the appeal by November 12, 2020. Dkt. No. 49. Plaintiff now moves to waive the initial partial filing fee because he has no funds to pay it and is unable to obtain a legal loan to cover the cost. Dkt. No. 50.

I have the authority to waive Plaintiff's initial partial filing fee under 28 U.S.C. § 1915(b)(4) if he lacks both the "assets" and the "means" to pay it. The Court of Appeals for the Seventh Circuit has explained that "[i]t is not enough that the prisoner lack assets on the date he files." *Newlin v. Helman*, 123 F.3d 429, 435 (7th Cir. 1997), *overruled in part on other grounds by Walker v. O'Brien*, 216 F.3d 626, 628–29 (7th Cir. 2000), and *Lee v. Clinton*, 209 F.3d 1025, 1027 (7th Cir. 2000). If that were the case, a prisoner could easily avoid paying the initial partial filing fee by spending what is in his trust account before filing his lawsuit. Therefore, a prisoner's "means" is construed broadly. A prisoner may lack "assets" but still have "means" to pay the fee.

Plaintiff's trust account statement shows he has neither the assets nor the means to pay the initial partial filing fee. I waived his payment of the initial partial filing fee to proceed on his

complaint in this court for the same reason. Dkt. No. 7 at 1. I will therefore grant Plaintiff's request to waive the initial partial filing fee on appeal. He will be responsible for paying the full \$505 appellate filing fee over time in the manner previously explained. *See* Dkt. No. 49 at 3.

**IT IS THEREFORE ORDERED** that Plaintiff's motion to waive the initial partial filing fee (Dkt. No. 50) is **GRANTED**. Plaintiff will be responsible for paying the full \$505 appellate filing fee over time and the agency having custody of Plaintiff shall collect from Plaintiff's prison trust account the \$505.00 filing fee by collecting payments from Plaintiff's prison trust account in an amount equal to 20% of the preceding month's income credited to the account in any month in which either (1) the balance in the account exceeds \$10 or (2) the income credited to the account in the preceding month exceeded \$10. The collected payments shall be sent to the clerk of court. The payments shall be clearly identified by the case name and number assigned to this case. If Plaintiff is transferred to another county, state, or federal institution, the transferring institution shall forward a copy of this Order along with his remaining balance to the receiving institution.

A copy of this order shall be sent to the officer in charge of the agency where the inmate is confined.

Dated at Green Bay, Wisconsin this 30th day of October, 2020.

s/ William C. Griesbach  
William C. Griesbach  
United States District Judge